IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR
S.B. Civil Writ Petition No.2681/07
M/s. Kamal Pushp Enterprises
Vs.
Bharat Sanchar Nigam Ltd. & Ors.

27.04.2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri D.K. Srivastava for petitioner.

Heard learned counsel for the petitioner.

Challenge has been made to order dated 7.8.2006 whereby the application of the petitioner under Order XI Rule 12, 14 and 151 CPC has been rejected. The petitioner had filed a suit for temporary injunction against UIT, Kota and two others challenging the procedure of tender. The documents which were sought to be requisitioned by aid of Order XI

Rule 12 and 14 CPC were tender notice, records relating to grant of tender, number of tenders received and records of technical bid and the representation made by the petitioner to the Chairman, UIT. The learned Court rejected the application on the premise that all the documents are public records which in accordance with Rule 43 of the General Rules, 1986 can be obtained by the petitioner form the concerned authorities and if he wanted the court to entertain any such application, the application should be accompanied by an affidavit as to how these documents / public records are relevant to the controversy in the suit and why certified copies thereof cannot be procured and submitted. The application was therefore held to be not

according to the aforesaid provisions and dismissed with the observation that the petitioner can procure and produce certified copies thereof.

In the impugned order, the Court also observed that whether or not the petitioner had applied for obtaining copies of those documents has not been brought on record. The learned counsel for the petitioner assailed the order on the ground that when the petitioner was in litigation with UIT itself, which was defendant in the suit, the petitioner according to Order XI Rule 12 could legitimately apply to the Court for directing other party to the suit to make all the documents which are in its possession relating to the question involved therein. Order XI Rule 14

provides that “it shall be lawful for the Court, at any time, during the pendency of any suit, to order the production by any party thereto, upon oath of such of the documents in his possession or power, relating to any matter in question in such suit, as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.”

During the course of argument, the learned counsel for the petitioner also produced certain documents to show that subsequent to passing of the impugned order, the petitioner applied to the respondent UIT for obtaining the copies of the aforesaid documents and the UIT declined to provide copies of these documents citing the reason of pendency

of the very same civil suit in which his application was rejected by the impugned order.

I have given my thoughtful consideration to the arguments advanced by learned counsel for the petitioner. I find that even if the Court has earlier rejected the application under Order XI Rule 12 and 14 CPC, correctness of such order shall have to be correctly followed shall have to be adjudged on the basis of the reasons mentioned therein. The Court found that the application submitted by the petitioner was not in conformity with the provisions referred to therein in as much as the application was not accompanied by an affidavit specifically relevance of the documents and why when the documents were public records, what

efforts the petitioner made to obtain their certified copies and whether at all the petitioner had applied for certified copies. Now that the petitioner has applied and his application has been refused, I do not see any bar in law in submitting another application on the same subject matter on the premise that in spite of his having applied, the contesting respondent has refused to supply those documents on the ground of pendency of the same civil suit. In fact, Order XI Rule 14 provides that it shall be lawful for the Court, at any time, during the pendency of any suit, to order the production by any party thereto, upon oath of such of the documents in his possession or power, relating to any matter in question in such suit, as the

Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.

In the present case however on the reasons which have been given in the impugned order, I do not see any legality or infirmity. The writ petition is therefore dismissed though with the aforesaid observations.

(Mohammad Rafiq),J.

Rs/-